



DAVE YOST
OHIO ATTORNEY GENERAL

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September 24, 2019

Office of the Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

Re: Supplemental facts notice in *In re State of Ohio*, No. 19-3827

Dear Ms. Hunt:

Ohio is writing to alert the Court of an important factual development in the District Court. On September 19, 2019, Defendant Allergan PLC sent a letter to Ohio regarding Allergen's settlement with Summit and Cuyahoga Counties to resolve the claims asserted in the bellwether trials Ohio asks this Court to halt.

In its letter, Allergan asserts that the counties partially resolved the State's claims and that the State can no longer recover for harm to Ohio residents in those counties:

As you know, the law prevents double-recovery for the same alleged harms, and Allergan of course reserves all of its rights to block or seek set-off of any overlapping claims or alleged harm to Cuyahoga or Summit counties or those counties' residents that the State may try to bring, to the extent such claims have been resolved through settlement.¹

¹ The September 19 Allergan letter is attached, as is the August 21 Ohio Attorney General Letter to which it responds.

The Allergan letter crystalizes the harm of the bellwether trials to Ohio. At least one defendant has taken, and others likely will take, the (incorrect) position that the political subdivisions can assert the State's claims and bind Ohio.

Ohio is harmed by the mere assertion of this position, because it complicates the work Ohio must do to address the statewide opioid crisis. This harm is compounded by the District Court's desire to leverage settlement at all costs, because the closer the parties get to trial, the more likely it is that the remaining defendants will act to avoid the trial by settling with the subdivisions. Any settlement that purports to partially resolve Ohio's claims further complicates Ohio's statewide efforts and impinges its sovereign interests.

Ironically, far short of the "global resolution" that the District Court nobly seeks, these settlements creates *more* litigation by requiring Ohio to litigate the meaning and application of the political-subdivision settlements in Ohio's pending state-court suit against the settling parties.

Sincerely,

DAVE YOST
Ohio Attorney General

/s/ Jonathan Blanton
JONATHAN BLANTON*
Deputy Attorney General for
Major Litigation
**Counsel of Record*

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2019, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. I further certify that a copy of the foregoing has been served via United States First Class Mail upon the following:

Hon. Dan Aaron Polster
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/s/ Jonathan Blanton

Jonathan Blanton
Deputy Attorney General



DAVE YOST

OHIO ATTORNEY GENERAL

Administration
Office 614-728-5458
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August 21, 2019

Via E-mail: robert.bailey@allergan.com

Robert D. Bailey,
Executive Vice President and Chief Legal Officer
Allergan PLC

Re: Ohio Opioid Litigation

Dear Mr. Baily:

My office has received word of your partial settlement with Cuyahoga and Summit Counties, and related entities.

In light of the pending settlement, I wish to remind you that several of the claims asserted by the political subdivisions are owned by Ohio, and can only be settled by me as Attorney General. (See my July 23, 2019 letter to the MDL court [Doc 1973] detailing this point.)

No settlement with any political subdivision(s) relieves Allergan PLC of any liability to the State for any claim that Ohio has brought. Allergan PLC's settlement reflects no more than hard municipal costs paid directly by the political subdivisions, and does not include settlement of any portion of any claim brought by the State. I am doing you the courtesy of making this clear prior to you finalizing your settlement.

Yours,

Dave Yost
Attorney General of Ohio

cc: Donna Welch donna.welch@kirkland.com
John Mitchell John.Mitchell@Thompson.Hine.com

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AND AFFILIATED PARTNERSHIPS

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September 19, 2019

Via Email:
jacqueline.king@ohioattorneygeneral.gov

General Dave Yost
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, OH 43215

Re: Allergan MDL Track 1 Settlement

Dear General Yost:

I write in response to your August 21 letter addressing my client's settlement with the MDL Plaintiffs. Your letter states that "several of the claims asserted by political subdivisions are owned by Ohio...". If that is indeed your position, it would seem that your office would immediately intervene in the pending political subdivision cases and assert its rights over these claims as other state AGs have done and are doing in similar cases. As I am sure you are aware, Defendants raised these same arguments early in the litigation, your office failed to take any position, and Judge Polster rejected them. We have reviewed your submission to the 6th Circuit and look forward to that Court's decision as to this contested legal issue. But of course, to the extent that the State of Ohio believes that it owns the claims being pursued in the MDL, it would seem obvious and appropriate that the State would intervene in that action directly.

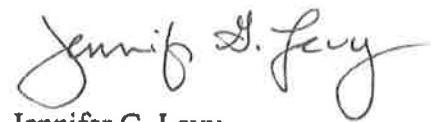
With respect to your contentions that "no settlement with any political subdivision(s) relieves Allergan PLC of any liability to the State for any claim that Ohio has brought" and "Allergan's settlement reflects nothing more than hard municipal costs paid directly by the political subdivisions and does not include settlement of any portion of any claim brought by the state" Allergan disagrees with these broad assertions. As you know, the law prevents double-

KIRKLAND & ELLIS LLP

General Yost
September 19, 2019
Page 2

recovery for the same alleged harms, and Allergan of course reserves all of its rights to block or seek set-off of any overlapping claims or alleged harm to Cuyahoga or Summit counties or those counties' residents that the State may try to bring, to the extent such claims have been resolved through settlement.

Sincerely,



Jennifer G. Levy

cc: Bob Bailey
PD Villarreal
Donna Welch
John Mitchell